

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<i>In re</i> TRANSCARE CORPORATION, <i>et al.</i> , <sup>1</sup> Debtors.	Chapter 7 Case No. 16-10407 (SMB) (Jointly Administered)
SHAMEEKA IEN on behalf of herself and all others similarly situated,  Plaintiff,  v.  TRANSCARE CORPORATION, TRANSCARE NEW YORK, INC., TRANSCARE ML, INC., TC AMBULANCE GROUP, INC., TRANSCARE MANAGEMENT SERVICES, INC., TCBA AMBULANCE, INC., TC BILLING AND SERVICES CORPORATION, TRANSCARE WESTCHESTER, INC., TRANSCARE MARYLAND, INC., TC AMBULANCE NORTH, INC. AND TRANSCARE HARFORD COUNTY, INC., LYNN TILTON, ARK CLO 2001-1 LIMITED, ARK INVESTMENT PARTNERS II, L.P., PATRIARCH PARTNERS, LLC, and PATRIARCH PARTNERS III, LLC,	Adv. Proc. No. 16-01033-smb

**DECLARATION OF NICOLE A. EICHBERGER, ESQ.  
IN SUPPORT OF NON- DEBTOR DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

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<sup>1</sup> The Debtor Defendants are TransCare Corporation, TransCare New York, Inc., TransCare ML, Inc., TC Ambulance Group, Inc., TransCare Management Services, Inc., TCBA Ambulance, Inc., TC Billing and Services Corporation, TransCare Westchester, Inc., TransCare Maryland, Inc., TC Ambulance North, Inc., TransCare Harford County, Inc., TransCare Pennsylvania, Inc., TC Ambulance Corporation and TC Hudson Valley Ambulance Corporation (collectively, the “Debtors,” “Debtor Defendants,” or “TransCare”).

Nicole A. Eichberger, Esq. declares, pursuant to 28 U.S.C. §1746 and under penalty of perjury, that the following is true and correct:

1. I am a partner at the law firm Proskauer Rose LLP, counsel of record for Non-Debtor Defendants Ark CLO 2001-1 Limited, Ark Investment Partners II, L.P., Patriarch Partners, LLC, Patriarch Partners III, LLC and Lynn Tilton (collectively referred to as “Non-Debtor Defendants”) in this action. I make this Declaration on personal knowledge and submit it in support of Non-Debtor Defendants’ Motion for Summary Judgment.

2. Attached hereto as Exhibit **A** is a true and correct copy of excerpts from the Deposition Transcript of Lynn Tilton taken on October 30, 2018, in the above-captioned case.

3. Attached hereto as Exhibit **B** is a true and correct copy of excerpts from the Deposition Transcript of Michael Greenberg taken on November 13, 2018, in the above-captioned case.

4. Attached hereto as Exhibit **C** is a true and correct of excerpts from the Deposition Transcript of John Husson taken on November 12, 2018, in the above-captioned case.

5. Attached hereto as Exhibit **D** is a true and correct copy of excerpts from the Deposition Transcript of Plaintiff Shameeka Ien taken on October 22, 2018, in the above-caption case.

6. Attached hereto as Exhibit **E** is a true and correct copy of excerpts from the Deposition Transcript of Randy Jones taken on November 29, 2018, in the above-captioned case.

7. Attached hereto as Exhibit **F** is a true and correct copy of excerpts from the Deposition Transcript of Salvatore LaMonica taken on October 23, 2018, in the above-captioned case.

8. Attached hereto as Exhibit **G** is a true and correct copy of excerpts from the Deposition Transcript of Carl J. Landeck taken on November 16, 2019, in the above-captioned case.

9. Attached hereto as Exhibit **H** is a true and correct copy of excerpts from the Deposition Transcript of Jean Luc Pelissier taken on October 25, 2018, in the above-captioned case.

10. Attached hereto as Exhibit **I** is a true and correct copy of excerpts from the Deposition Transcript of Brian Stephen taken on October 18, 2018, in the above-captioned case.

11. Attached hereto as Exhibit **J** is a true and correct copy of excerpts from the Deposition Transcript of Lynn Tilton taken on October 29, 2018, in *LaMonica v. Tilton, et al.*, Adv. Proc. 18-01021-smb (Bankr. S.D.N.Y.).

12. Attached hereto as Exhibit **K** is a true and correct of excerpts from the Deposition Transcript of John Husson taken on November 12, 2018, in *LaMonica v. Tilton, et al.*, Adv. Proc. 18-01021-smb (Bankr. S.D.N.Y.).

13. Attached hereto as Exhibit **L** is a true and correct copy of excerpts from Deposition Transcript of Michael Greenberg taken on October 10, 2018, in *LaMonica v. Tilton, et al.*, Adv. Proc. 18-01021-smb (Bankr. S.D.N.Y.).

14. Attached hereto as Exhibit **M** is a true and correct copy of excerpts from Deposition Transcript of Glenn Leland taken on November 27, 2018 and January 3, 2019, in *LaMonica v. Tilton, et al.*, Adv. Proc. 18-01021-smb (Bankr. S.D.N.Y.).

15. Attached hereto as Exhibit **N** is a true and correct copy of excerpts from Deposition Transcript of Scott Whalen taken on September 27, 2018, in *LaMonica v. Tilton, et al.*, Adv. Proc. 18-01021-smb (Bankr. S.D.N.Y.).

16. Attached hereto as Exhibit **O** is a true and correct copy of the April 6, 2017 hearing regarding the 341 meeting held in *In re TransCare Corporation*, 16-10407-smb (Bankr. S.D.N.Y.).

17. Attached hereto as Exhibit **P** is a true and correct copy of an email from Peter Wolf to Michael Greenberg, dated February 12, 2016, bearing Bates number PPTC0005903.

18. Attached hereto as Exhibit **Q** is a true and correct copy of an email from Thomas Fuchs to John Belliveau, dated February 24, 2016, bearing Bates number PPTC00027075.

19. Attached hereto as Exhibit **R** is a true and correct copy of an email from Glenn Youngblood to Jean Luc Pelissier and Michael Greenberg, dated February 13, 2016, bearing Bates number PPTC00021315.

20. Attached hereto as Exhibit **S** is a true and correct copy of Plaintiff Shameeka Ien's pay stubs, dated September 13, 2013 and February 19, 2016, bearing Bates numbers P000022 through P000023.

21. Attached hereto as Exhibit **T** is a true and correct copy of an email from Glenn Leland to Jean Luc Pelissier and Michael Greenberg, dated October 1, 2015, bearing Bates number TRANS CARE00205383.

22. Attached hereto as Exhibit **U** is a true and correct copy of Plaintiff Shameeka Ien's 2016 W-2 tax form, bearing Bates number P000176.

23. Attached hereto as Exhibit **V** is a true and correct copy of TransCare Corporation Written Consent of the Sole Director, dated July 10, 2012, bearing Bates number TRANSCARE00024172 through TRANSCARE00024175.

24. Attached hereto as Exhibit **W** is a true and correct copy of the Management Services Agreement, dated January 25, 2011, bearing Bates number PPTC00003305 through PPTC00003321.

25. Attached hereto as Exhibit **X** is a true and correct copy of Non-Debtor Defendants' Verified Answers and Objections to Plaintiff's First Set of Interrogatories, served on March 28, 2017.

26. Attached hereto as Exhibit **Y** is a true and correct copy of the Forbearance Agreement and Amendment No. 12 to Loan and Security Agreement, dated December 22, 2015, bearing Bates number PPTC00020657 through PPTC00020671.

27. Attached hereto as Exhibit **Z** is a true and correct copy of the Amendment to Forbearance Agreement and Amendment No. 13 to Loan and Security Agreement, dated January 29, 2016, bearing Bates numbers PPTC00007436 through PPTC00007447

28. Attached hereto as Exhibit **AA** is a true and correct copy of an email from John Husson to Michael Greenberg, dated December, 24, 2015, bearing Bates number PPTC00020627 through PPTC00020630.

29. Attached hereto as Exhibit **BB** is a true and correct copy of Consulting Agreement between Carl Marks Advisory Group, LLC and TransCare Corp., dated January 7, 2016, bearing Bates number PP-TRBK0043438 through PP-TRBK0043447.

30. Attached hereto as Exhibit **CC** is a true and correct copy of an email from Kurt Marsden to Lynn Tilton, dated February 9, 2016, bearing Bates number PPTC00024869 through PPTC00024872

31. Attached hereto as Exhibit **DD** is a true and correct copy of an email from Carlos Mercado to Lynn Tilton, dated January 15, 2016, bearing Bates numbers PP-TRBK0015413 through PP-TRBK0015414.

32. Attached hereto as Exhibit **EE** is a true and correct copy of an email from Lynn Tilton to Cindi Giglio and Lynn Harrison, dated February 24, 2016, bearing Bates numbers PP-TRBK0047615 through PP-TRBK0047616.

33. Attached hereto as Exhibit **FF** is a true and correct copy of the Amendment to Forbearance Agreement and Amendment No. 14 to Loan and Security Agreement, dated February 5, 2016, bearing Bates numbers WF00001360 through WF00001370.

34. Attached hereto as Exhibit **GG** is a true and correct copy of a funding model titled "Scenario 1- Chapter 11 - 30 Day transition out of 911/Core operations / TransCare 13 Week Forecast," bearing Bates numbers CM\_TC2018\_0009030 through CM\_TC2018\_0009033.

35. Attached hereto as Exhibit **HH** is a true and correct copy of the Delaware Certificate of Incorporation for Transcendence Transit Inc., dated February 10, 2016, bearing Bates numbers PTC00014631 through PTC00014633.

36. Attached hereto as Exhibit **II** is a true and correct copy of the Delaware Certificate of Incorporation for Transcendence Transit II, Inc., dated February 10, 2016, bearing Bates number PPTC00025594 through PPTC00025595.

37. Attached hereto as Exhibit **JJ** is a true and correct copy of Plaintiff Shameeka Ien's LinkedIn profile, as of October 19, 2018.

38. Attached hereto as Exhibit **KK** is a true and correct copy of the Amendment to Forbearance Agreement and Amendment No. 16 to Loan and Security Agreement, dated February 11, 2016, bearing Bates numbers PPTC00005859 through PPTC00005869.

39. Attached hereto as Exhibit **LL** is a true and correct copy of the Amendment to Forbearance Agreement and Amendment No. 15 to Loan and Security Agreement, dated February 10, 2016, bearing Bates numbers WF00001371 through WF00001381.

40. Attached hereto as Exhibit **MM** is a true and correct copy of an email from Kurt Marsden to Lynn Tilton, dated February 9, 2016, bearing Bates numbers PP-TRBK0018166 through PP-TRBK0018169.

41. Attached hereto as Exhibit **NN** is a true and correct copy of an email from Lynn Tilton to Robert Strack, dated February 17, 2016, bearing Bates numbers WF\_TC\_00005264 through WF\_TC\_00005273.

42. Attached hereto as Exhibit **OO** is a true and correct copy of the Amendment to Forbearance Agreement and Amendment No. 16 to Loan and Security Agreement, dated February 11, 2016, bearing Bates numbers WF00001390 through WF00001400.

43. Attached hereto as Exhibit **PP** is a true and correct copy of an email from Jean Luc Pelissier to Randy Jones, et al., dated February 14, 2016, bearing Bates numbers PP-TRBK0097614 through PP-TRBK0097622.

44. Attached hereto as Exhibit **QQ** is a true and correct copy of the Amendment to Forbearance Agreement and Amendment No. 17 to Loan and Security Agreement, bearing Bates numbers PPTC00005304 through PPTC00005314.

45. Attached hereto as Exhibit **RR** is a true and correct copy of an email from Lynn Tilton to Scott Whalen, dated February 16, 2016, bearing Bates number PP-TRBK0028179.

46. Attached hereto as Exhibit **SS** is a true and correct copy of an email from Robert Strack to Lynn Tilton, dated February 17, 2016, bearing Bates numbers PPTC00024820 through PPTC00024826.

47. Attached hereto as Exhibit **TT** is a true and correct copy of an email from Lynn Tilton to Robert Strack, dated February 17, 2016, bearing Bates numbers PP-TRBK0052262.

48. Attached hereto as Exhibit **UU** is a true and correct copy of an email from Lynn Tilton to Robert Strack, dated February 17, 2016, bearing Bates number WF-TC00004121 through WF-TC\_00004123.

49. Attached hereto as Exhibit **VV** is a true and correct copy of the “TransCare Cash Forecast” chart, bearing Bates number PP-TRBK0097460.

50. Attached hereto as Exhibit **WW** is a true and correct copy of an email from Lynn Tilton to Mark Cluster, et al., dated February 18, 2016, bearing Bates numbers CM\_TC2018\_0003083 through CM\_TC2018\_0003087.

51. Attached hereto as Exhibit **XX** is a true and correct copy of an email from Alicia Staggers to Lynn Tilton, dated February 18, 2016, bearing Bates number PP-TRBK0052107.

52. Attached hereto as Exhibit **YY** is a true and correct copy of an email from Lynn Tilton to Jean Luc Pelissier, et al., dated February 19, 2016, bearing Bates number PP-TRBK0074971 through PP-TRBK0074973.



53. Attached hereto as Exhibit **ZZ** is a true and correct copy of an email from Lynn Tilton to Robert Strack, et al., dated February 19, 2016, bearing Bates number WF\_TC\_00004187 through WF\_TC\_00004190.

54. Attached hereto as Exhibit **AAA** is a true and correct copy of an email from Michael Greenberg to Scott Whalen, dated February 19, 2016, bearing Bates number PPTC00011487 through PPTC00011488.

55. Attached hereto as Exhibit **BBB** is a true and correct copy of an email from Michael Greenberg to Lynn Tilton, dated February 20, 2016, bearing Bates number PP-TRBK0044541 through PP-TRBK0044542.

56. Attached hereto as Exhibit **CCC** is a true and correct copy of an email from Lynn Tilton to Scott Whalen and Alicia Staggers, dated February 20, 2016, bearing Bates number PP-TRBK0052255 through PP-TRBK0052257.

57. Attached hereto as Exhibit **DDD** is a true and correct copy of an email from Lynn Tilton to Robert Strack, et al., dated February 22, 2016, bearing Bates number WF\_TC\_00000394 through WF\_TC\_00000399.

58. Attached hereto as Exhibit **EEE** is a true and correct copy of an email from Scott Whalen to Jodie Frazier, dated February 22, 2016, bearing Bates number PP-TRBK0091126 through PP-TRBK0091130.

59. Attached hereto as Exhibit **FFF** is a true and correct copy of an email from Jean Luc Pelissier to Michael Greenberg, dated February 15, 2016, bearing Bates number PPTC00015671 through PPTC00015672.

60. Attached hereto as Exhibit **GGG** is a true and correct copy of the Subpoena to ADP, served on December 12, 2016.

61. Attached hereto as Exhibit **HHH** is a true and correct copy of an email from Lynn Tilton to Jonathan N. Helfat and Cindi Giglio, dated February 23, 2016, bearing Bates number PP-TRBK0051379 through PP-TRBK0051382.

62. Attached hereto as Exhibit **III** is a true and correct copy of a the Notice of Default and Accelaration to TransCare Corporation, dated February 24, 2016, bearing bates numbers PP-TRBK0043311 through PP-TRBK0043314.

63. Attached hereto as Exhibit **JJJ** is a true and correct copy of an email from Brian Stephen to Peter Wolf attaching the Notice of Acceptance of Subject Collateral in Partial Satisfaction of Obligation, dated February 24, 2016, bearing Bates number PP-TRBK0043305 through PP-TRBK0043314.

64. Attached hereto as Exhibit **KKK** is a true and correct copy of Bill of Sale, Agreement to Pay and Transfer Statement, dated February 24, 2016, bearing Bates numbers PPTC00025607 through PPTC00025612.

65. Attached hereto as Exhibit **LLL** is a true and correct copy of an email from Glen Youngblood to Glen Youngblood, dated February 24, 2016, bearing Bates number P000094.

66. Attached hereto as Exhibit **MMM** is a true and correct copy of an email from Glen Youngblood to Glen Youngblood, dated February 24, 2016, bearing Bates number TRANSCARE00231835.

67. Attached hereto as Exhibit **NNN** is a true and correct copy of an email from Glen Youngblood to Glen Youngblood dated February 24, 2016, bearing Bates number TRANSCARE00231836.

68. Attached hereto as Exhibit **OOO** is a true and correct copy of an email from Glen Youngblood to Glen Youngblood, dated February 24, 2016, bearing Bates number TRANSCARE00231839.

69. Attached hereto as Exhibit **PPP** is a true and correct copy of an email from Lynn Tilton to Randy Jones, dated February 24, 2016, bearing Bates number PP-TRBK0107389.

70. Attached hereto as Exhibit **QQQ** is a true and correct copy of an email from Glen Youngblood to Glen Youngblood, dated February 24, 2016, bearing Bates number TRANSCARE00231840.

71. Attached hereto as Exhibit **RRR** is a true and correct copy of an email from Salvatore LaMonica to Linda Riffkin, dated February 26, 2016, bearing Bates number TRANSCARE00225051.

72. Attached hereto as Exhibit **SSS** is a true and correct copy of an email from Christina Hardy, dated March 8, 2016, bearing Bates number P000131 through P000133.

Dated: May 21, 2019



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Nicole A. Eichberger, Esq.